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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

ISOMEDIA.COM, LLC, a
Washington limited liability company,

Plaintiff,

v.

SPECTRUM DIRECT, INC., a
California corporation;
VISTAPRINT USA, INC., a
Delaware corporation; THE
LEGAL LEADS NETWORK, INC., a
Florida corporation; AARP, INC.,
a Washington, DC
non-profit corporation;
PROSPER, INC., a Utah
corporation; COSTA MARKETING
GROUP, INC., a Florida
corporation; PARAGON
SOLUTIONS NETWORK, INC., a
California corporation;
MEDICAL HAIR RESTORATION,
INC., a Florida corporation;
GREEN BULLION FINANCIAL
SERVICES, LLC, a Florida limited
liability company; and JOHN
DOES, I-CC,

Defendants.

NO. C08 1733)LR

COMPLAINT FOR PENALTIES
AND DAMAGES UNDER THE CAN-
SPAM ACT OF 2003, THE
WASHINGTON CEMA (RCW
19.190 ET SEQ.) AND CPA (RCW
19.86); AND INJUNCTIVE RELIEF

[JURY DEMANDED]



08-CV-01733-CMP

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -1
ISOMEDIA v. SPECTRUM DIRECT, ET AL.

iJustice Law, PC
PO Box 25817
Seattle, WA 98165-1317
Phone/Fax: 888-839-3299

SEA 22240
Summons Iss.

PARTIES, JURISDICTION, VENUE

1. Plaintiff **ISOMEDIA, LLC** (hereinafter "**ISOMEDIA**") is a Washington limited liability company, formed and in good standing under the laws of the State of Washington, with its principal place of business in Seattle, Washington. ISOMEDIA has done all things and taken all necessary steps to bring this lawsuit.
2. On information and belief, Plaintiff alleges that Defendant **SPECTRUM DIRECT, INC. ("SPECTRUM")** is a California corporation, with its principal places of business in the state of California, doing business as, 'Health Quote Finder'; 'American Life Direct'; and other internet aliases.
3. On information and belief, Plaintiff alleges that Defendant **VISTAPRINT USA, INC., ("VISTAPRINT")** is a Delaware corporation, with its principal place of business in the state of Massachusetts, doing business as, 'VistaPrint USA,' and other internet aliases.
4. On information and belief, Plaintiff alleges that Defendant **AARP, INC., ("AARP")** is a non-profit corporation, with its principal place of business in Washington, DC.
5. On information and belief, Plaintiff alleges that Defendant **COSTA MARKETING GROUP, INC., ("COSTA")** is a Florida corporation, with its principal place of business in the state of Florida.
6. On information and belief, Plaintiff alleges that Defendant **PARAGON SOLUTIONS NETWORK, INC., ("PARAGON")** is a California corporation, with its principal place of business in the state of California.
7. On information and belief, Plaintiff alleges that Defendant **THE LEGAL LEADS NETWORK, INC., ("LEGAL LEADS")** is a Florida corporation, with its principal place of business in the state of Florida.
8. On information and belief, Plaintiff alleges that Defendant **PROSPER, INC., ("PROPSER")** is a Utah corporation, with its principal place of business in the state of Utah.

9. On information and belief, Plaintiff alleges that **Defendant MEDICAL HAIR RESTORATION, INC.**, ("**MEDICAL HAIR**") is a Florida corporation, with its principal place of business in the state of Florida.
10. On information and belief, Plaintiff alleges that **Defendant GREEN BULLION FINANCIAL SERVICES, LLC**, ("**GREEN BULLION**") is a Florida limited liability company, with its principal place of business in the state of Florida.

Jurisdiction and Venue

11. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question), for violations of the CAN-SPAM Act of 2003 (15 U.S.C. § 7701 et seq.), and original jurisdiction under 15 U.S.C. § 7706(g)(1) for cases involving a civil action by an internet access service adversely affected by a violation of 15 U.S.C. § 7704(a)(1), 15 U.S.C. § 7704(b), or 15 U.S.C. § 770(d), or a pattern of practice that violates paragraphs (2), (3), (4), or (5) of section 15 U.S.C. § 7704(a).
12. The Court also has original jurisdiction pursuant to 28 U.S.C. §1332 (diversity).
13. This Court has supplemental, and pendant jurisdiction of state law claims pursuant to U.S.C. § 1367, arising from the same facts as pled below, also brought for violations of the Revised Code of Washington RCW 19.190 et seq., and RCW 19.86 et seq.
14. Defendants have purposely availed themselves of the privileges of conducting commercial activity in the forum, and the exercise of jurisdiction is reasonable since Defendants should have known that they would be subject to the jurisdiction and laws of the forum State when they sent, or had commercial emails sent to email accounts in the State of Washington such as Plaintiff's. *Aitken v. Communications Workers of America*, 496 F. Supp. 2d 653 (E.D. Va., 2007); *Verizon Online Services, Inc. v. Ralsky*, 203 F. Supp. 2d 601

(E.D. Va., 2002); and *Internet Doorway, Inc. v. Parks*, 138 F. Supp. 2d 773(S.D. Miss., 2001).

15. Venue is proper pursuant to 28 U.S.C. §1391, as a substantial part of the unlawful actions by the Defendants occurred in this judicial district, namely the subject emails were sent to email addresses, and received on servers and protected computers located in the State of Washington, and particularly in the Western District of Washington.

General Allegations

16. During all times relevant hereto, and through the present, Plaintiff ISOMEDIA provided and enabled email forwarding for multiple users on a computer server that provides email forwarding services, domain registration and updating, site construction, hosting and maintenance to Plaintiff's customers.
17. At all relevant times herein ISOMEDIA was an "internet access service" ("IAS") as defined under 15 USC 7702(11) and 47 USC 231(e)(4), and an "interactive computer service" ("ICS") under RCW 19.190.010(8).
18. The email accounts hosted and served by Plaintiff IAS/ICS include email accounts owned by third-party customers of Plaintiff's IAS/ICS, and also include email accounts owned by Plaintiff, collectively the "Email Addresses" and/or "Recipient Address" and individually and generically an "Email Address"
19. At all times material hereto, for the Email Addresses and each of them, the information that at each of the Recipient Addresses belonged to Washington residents was and is available upon request from the registrant of the domain in the email address, ISOMEDIA.COM LLC being a Washington resident and 'isomedia.com' being registered with a Washington address.
20. During 2008 Plaintiff received at the Email Addresses numerous electronic-mail messages sent and/or initiated by or on behalf of Defendants. (collectively the "Emails" or individually and generically as an "Email").

1 21. The Emails, and each of them, were received by Plaintiff and/or by Recipient
2 Addresses provided by Plaintiff on its servers located in Seattle, Washington
3 and/or Redmond, Washington.

4 22. Each of the Emails, or some of the violate the law in the following manner:

5 a. intentionally misrepresents and/or obscures information that
6 could be used in identifying the point of origin or the transmission path
7 thereof;

8 b. contains header information that is materially false or materially
9 misleading;

10 c. fails to include, or contain a valid physical address in the body of
11 the email, or contains multiple addresses, none of which identify the
12 sender clearly and or conspicuously;

13 d. fails to adequately identify the Emails as a commercial
14 solicitation;

15 e. uses a falsely registered or cloaked domain;

16 f. fails to accurately identify the actual sender of the Emails in the
17 "From" name line and or "Return Path" and/or body;

18 g. uses a return email address purporting to be intended for
19 "opting-out" or "unsubscribing", which is rendered nonfunctional
20 prior to 30 days subsequent to the date the Email was sent;

21 h. contains a physical address for "opting-out" or "unsubscribing"
22 from further commercial electronic messages which was not
23 honored and/or was nonfunctional;

24 i. was sent to and received at the Recipient Addresses
25 subsequent to notice provided to Defendant to cease and desist
 sending unsolicited, unwanted, and unlawful Email.

26 23. Defendants initiated the transmission of the Emails, and each of them. In the
27 alternative, Defendants conspired or otherwise acted in collusion with another

1 or other, or assisted another or others to transmit the Emails, and each of
2 them.

3 24. At all times material hereto, Defendants knew or had reason to know that the
4 Recipient Addresses, and each of them, were and are held by a Washington
5 resident.

6 25. As a result of the receipt of spam in general, including the receipt of the
7 Emails at issue herein, Plaintiff has incurred the following costs, and suffered
8 the following damages: Had to purchase 7 additional servers at a cost of
9 \$2,000 each; Had to purchase 10M/s additional bandwidth at a cost of \$230
10 per month; Had to pay 2 FTE for technical staff to deal with spam and spam
11 related issues at an average fully burdened rate of \$6,000 per month; Lost
12 over 300 customers relating to spam issues with an average revenue per
13 subscriber of \$88/month.

14 **FIRST CAUSE OF ACTION – CAN-SPAM ACT**

15 **15 U.S.C. §7701 et seq.**

16 26. On the basis of the facts set forth herein, Defendants initiated the
17 transmission of the Emails, and each of them, to a protected computer in
18 violation of 15 U.S.C. §7704(a), causing damage to Plaintiff ISOMEDIA as the
19 provider of the Internet access service receiving each such Email, and
20 entitling Plaintiff to statutory damages of \$100.00 per each such Email, as
21 provided in 15 U.S.C. §7706 (g) (3), together with actual damages proven at
22 trial.

23 27. Defendants did willfully and knowingly so act in violation of the provisions of
24 15 U.S.C. §7701 et seq.

25 28. As a proximate result of said unlawful conduct by Defendants, Plaintiffs are
entitled to treble all statutory damages as a result of violation of any section of
15 U.S.C. §7704 (b) as set forth in 15 U.S.C. §7706 (g)(1)(C).

- 1 29. Plaintiffs, pursuant to 15 U.S.C. §7706 (g)(1)(A), furthermore seek a
2 preliminary and permanent injunction against the Defendants for their current
3 and future violations of the CAN-SPAM ACT of 2003 as Plaintiffs and
4 members of the general public will continue to incur damages as a result of
5 Defendants' unlawful actions.
6 30. Plaintiffs furthermore seek their attorney fees and costs against Defendants
7 pursuant to 15 U.S.C. §7706 (g)(4).

8 **SECOND CAUSE OF ACTION –**
9 **Violations of the Washington CEMA**
10 **RCW 19.190.010 - .070**

- 11 31. On the basis of the facts set forth above, and incorporated by reference
12 herein, Defendants initiated, conspired with another to initiate, or assisted the
13 transmission of the Emails, and each of them, in violation of RCW
14 19.190.020, causing damage to Plaintiff ISOMEDIA as the interactive
15 computer service receiving each such Email in the amount of \$1,000 for each
16 such Email, as provided in RCW 19.190.040 (2).

17 **THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT**
18 **Ch. 19.86 RCW**

- 19 32. On the basis of the facts set forth hereinabove, and incorporated by reference
20 herein, Defendants initiated the Emails, and each of them, in violation of RCW
21 19.190.030 and Chapter 19.86 RCW, causing damage to Plaintiff ISOMEDIA
22 as the interactive computer service receiving each such Email in the amount
23 of \$1,000 for each such Email, as provided in RCW 19.190.040 (2).

REQUEST FOR RELIEF

Plaintiff respectfully requests the following relief:

1. Entry of a Judgment against the Defendants in the amount of \$1,100 per Email, plus such other and further damages as may be proved at trial, plus treble damages to the extent permitted by Chapter 19.86 RCW and to the extent permitted by 15 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the highest rate permitted by law, plus cost of suit and reasonable attorney fees pursuant to Chapter 19.86 RCW and 15 U.S.C. §7706 (g) (4);
2. Entry of a permanent injunction against the Defendants prohibiting the Defendants from sending or causing to be sent electronic mail messages of any kind or nature to the Email Addresses using the Whew.com domain.
3. Such other and further relief as the Court deems just and equitable in the premises.

RESPECTFULLY SUBMITTED this ^{2nd} day of December, 2008.

i.JUSTICE LAW, P.C.

DOUGLAS E. MCKINLEY, JR.
Attorney at Law

/S/ Robert J. Siegel
Robert J. Siegel, WSBA #17312

/S/ Douglas E. McKinley, Jr.
Douglas E. McKinley, Jr.,
WSBA#20806

Attorney for Plaintiffs

Attorney for Plaintiffs

VERIFICATION

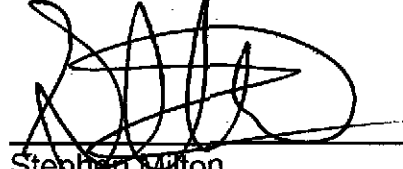
I, Stephen Milton, on behalf of Isomedia, Inc., Plaintiff in the above-entitled action, state and swear under penalty of perjury under the laws of the State of

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -8
ISOMEDIA v. SPECTRUM DIRECT, ET AL.

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Seattle, WA 98165-1317
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1 Washington, that I have read the Complaint, and am familiar with the contents thereof,
2 and believe same to be true and accurate.

3 Signed this 26th day of November, 2008, at Seattle, Washington.

4 

5 Stephen Milton

6 On behalf of ISOMEDIA, INC. as its Chief Executive Officer/Chief Technical Officer



